statute provides that "the defendant" shall be entitled to six peremptory challenges. *Held,* that each of the three defendants was entitled to six peremptory challenges and that the court erred in ruling that defendants were entitled to a total of only six challenges. *State* v. *Stokley et al.* (Kan. 1912) 128 Pac. 189.

The question is largely one of statutory construction. The court holds in effect that the words of the statute "the defendant" really mean, as applied to this case, "each of the defendants." The decision is based on an earlier Kansas case, *State* v. *Durein,* 29 Kan. 688, in which the court said, "It is essential that the right of challenge be regarded and enforced as the personal right of each individual defendant." At common law it was usually held that in the case of persons tried jointly each might exercise the full number of challenges. *Smith* v. *State,* 57 Miss. 822. But in THOMPSON, TRIALS, §45, the modern rule is stated as follows: "It is now generally settled that when several persons are jointly indicted, they must join in their challenges, and cannot claim for each the number accorded by the common law or by statute, except in cases where the statute accords them this right, which it does in some jurisdictions, either in express terms or by reasonable interpretation." Whether a reasonable interpretation of the Kansas statute (GEN. STAT. 1909, §6774) gives each defendant the full number of challenges is the question raised by the decision in the principal case. Statutes providing that "each party" may challenge a certain number are usually construed as giving defendants jointly only the number to which each would be entitled upon a separate trial. 24 CYC. 359; *State* v. *Cady,* 80 Me. 413, 14 Atl. 940; *Peo.* v. *O'Laughlin,* 3 Utah 133, 1 Pac. 653; *State* v. *Sutton* 10 R. I. 159. In many of those states in which the matter has been regulated by the legislature, the statutes expressly require that joint defendants shall join in their challenges. THOMPSON & MERRIAM, JURIES, §162. U. S. COMP. STAT. 1901, §819 is to the same effect.

DEEDS—ACTS CONSTITUTING DELIVERY.—A party owning a tract of land wished to make a deed of it, but wanted it so arranged that the deed was not to operate till after his death. In pursuance of these instructions the scrivener prepared a warranty deed and gave it to the grantor; the latter then handed the deed to the grantee and he then immediately gave it to the scrivener to be kept in his custody till after the grantor's death when it was to be delivered to the grantee. *Held* there was a valid delivery so that a present interest passed to the grantee which could not be afterwards defeated by any change of mind on the part of the grantor. *Luscombe* v. *Peterson,* (Mich. 1912) 138 N. W. 1057.

A difficult question is always involved where the grantor wishes to postpone the complete effect of a deed till after his death. In such cases the grantor usually wishes to avoid a contest over his will, or as in the principal case, to save the expense of administration. It would appear that the object of the grantor could be accomplished by reserving a life estate to himself in the property conveyed. Cases in which the question usually arises are those in which the grantor himself retains possession of the deed, but with

the intention that after his death it shall be possessed by the grantee; and those in which the deed is deposited with a person other than the grantee, to be delivered to the grantee after the grantor's death. BREWSTER, CONVEYANCING, §305. In the former class of cases there is no delivery because the grantor has not surrendered control of the deed, and therefore the deed is void. *Stone* v. *French,* 37 Kan. 145, 14 Pac. 530, 1 Am. St. Rep. 237; *Parrott* v. *Avery,* 159 Mass. 594, 35 N. E. 94, 38 Am. St. Rep. 465. But in the latter class of cases if the grantor reserves no control over the deed during his lifetime, then there is a valid conveyance, and the delivery relates back to the time when the grantor surrendered control over it to the depositary. *Brown* v. *Westerfield,* 47 Neb. 399, 53 Am. St. Rep. 532, 66 N. W. 439; *Fulton* v. *Priddy,* 123 Mich. 298, 81 Am. St. Rep. 201, 82 N. W. 65. In the principal case it was found that the grantor had surrendered control of the deed and it operated at once.

DEEDS—CONDITION OR COVENANT.—Land was conveyed to the plaintiff Board of Education by B., the habendum reading, " to have and to hold the same unto the said second party, their successors in office forever, to be used only for school purposes," and plaintiff paid full value therefor. Plaintiff ceased to use the premises for school purposes and proposed to sell to defendant. An agreed action was started to determine whether plaintiff could convey a good title. *Held* that the words, "to be used for school purposes" were descriptive merely; a covenant and not a condition. *Wright and Taylor, Inc.* v. *Board of Education of Bullitt Co.,* (Ky. 1913) 152 S. W. 543.

Whether certain words used in a deed amount to a condition or a covenant is a matter of construction, and the intention of the parties will control. *City of St. Louis* v. *Ferry Co.,* 88 Mo. 615; *Post* v. *Weil,* 115 N. Y. 361. Such words as "on the express understanding," "provided always," "provided," "upon express condition that," "subject to the condition that," are not alone sufficient to show an intent to insert a condition subsequent, and clauses introduced by such words are frequently regarded as covenants only. *Anthony* v. *Stephens,* 46 Ga. 241; *Countryman* v. *Deck,* 13 Abb. N. C. (N. Y.) 110; *Woodruff* v. *Woodruff,* 44 N. J. Eq. 349; *Post* v. *Weil,* 115 N. Y. 361; *Skinner* v. *Shepard,* 130 Mass. 180. Where the intention of the parties is doubtful, the court will construe a restriction in a deed as a covenant rather than as a condition. *Lowman* v. *Crawford,* 99 Va. 688. Where a right of re-entry is reserved along with the restriction, a sufficient intent is held to be shown to construe as a condition. *Woodruff* v. *Power Co.,* 10 N. J. Eq. 489; *Minard* v. *D. L & W. R. Co.,* 139 Fed. 60; *Brown* v. *Tilley,* 25 R. I. 579. And such clause of re-entry is often held to be necessary in order to construe a restriction as a condition rather than as a covenant. *Star Brewery Co.* v. *Primas,* 163 Ill. 652; *Village of Ashland* v. *Greiner,* 58 Oh. St. 67; *Church* v. *Church,* 114 N. Y. S. 623.

DIVORCE—EXTRATERRITORIAL EFFECT OF PROHIBITION OF REMARRIAGE.—A petition by an administrator to sell land for the payment of debts was opposed by the defendant, who claimed homesead and dower rights in the land as